

Alternative Dispute Resolution

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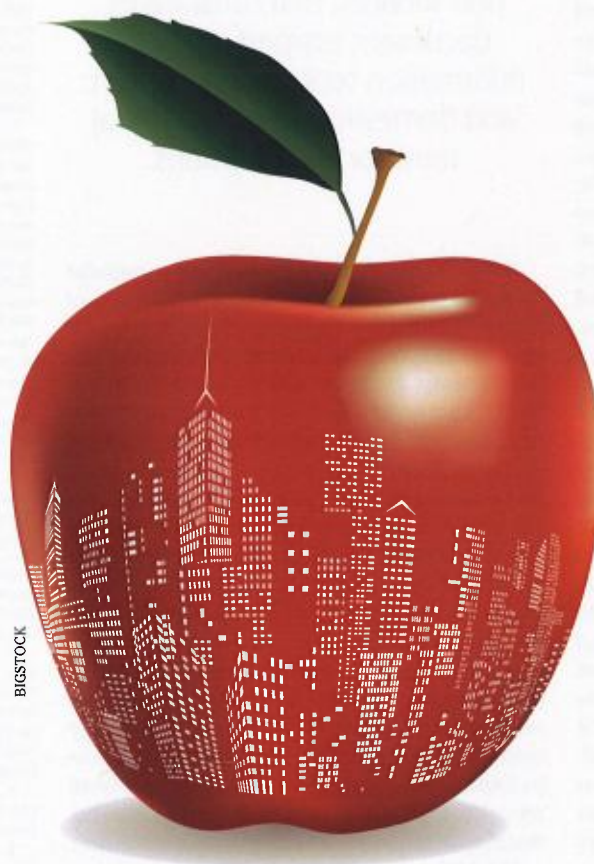
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More Reasons to Arbitrate in the **Big Apple**

BY STEPHEN P. YOUNGER

In 2010, the New York State Bar Association's (NYSBA) Task Force on New York Law in International Matters (Task Force) recommended the creation of a permanent center for international dispute resolution in New York.¹ And on June 17, 2013, the New York International Arbitration Center (NYIAC), a non-profit providing world-class arbitration facilities and educational programs about international arbitration, opened its doors. NYIAC hosted its first arbitration hearings a month later. These two watershed events marked a new era for international arbitration in New York.²

NYSBA created the Task Force to conduct a systematic review of the use of New York law as an international standard and the role of New York as a neutral forum for resolving international disputes, and to formulate proposals to encourage parties to use New York as a forum for the resolution of disputes. A thorough analysis by the Task Force found New York to be an ideal venue for international dispute resolution.³ New York is widely recognized as having an established, well-developed, and stable body of commercial law that is ideally equipped to deal with disputes arising out of complex transactions. The New York courts fully support the U.S. Supreme Court's pronouncement that there is "a national policy in the United States favoring arbitration."⁴ Consistent with that policy, New York courts strictly enforce arbitral awards,⁵ and have a longstanding reputation for neutrality in international disputes.⁶ In addition, New



York arbitral proceedings can be structured to streamline the discovery process and focus on developing claims and defenses early on, thereby promoting cost-effective and convenient adjudication.⁷ New York courts act as adjuncts to arbitral proceedings and "will assist in the appointment of arbitrators, issue attachments in aid of arbitration, grant preliminary injunctions and issue anti-suit injunctions to prevent parties from engaging in competing parallel proceedings."⁸ In line with one of the Task Force's recommendations to encourage consistent and supportive court decisions and to streamline proceedings, the Chief Administrative Judge of the New York Courts recently designated a single

justice to hear all international arbitration cases before the Commercial Division of the Supreme Court in New York City.⁹

As a global financial center, New York is home to many of the largest and most sophisticated international law firms as well as a highly regarded judiciary. Thus, New York offers access to a broad range of experienced international law firms and thousands of attorneys with expertise in multiple legal systems, and experience in handling a wide variety of international disputes and arbitrations. New York also provides access to a plethora of experienced arbitrators and other neutrals, from dedicated independent arbitrators and mediators to retired judges to counsel at multinational law firms.

Finally, from a purely practical standpoint, New York offers a wealth of resources that are integral to any smoothly-run arbitration, such as easy access to court reporters, translation and interpretation services, trial consultants, document support services, information technology support, and domestic and international transportation options. New York's status as a major legal market has led to the development of a commensurate market in ancillary services, and arbitrating in New York avoids the potential expense of bringing in service providers with relevant expertise. New York is also the home of several respected arbitration and alternative dispute resolution institutions, including the International Centre for Dispute Resolution, the CPR International Institute for Conflict Prevention and Resolution, and JAMS.

To take advantage of these resources, and in response to the establishment of international arbitration centers in other financial centers around the world, such as the Singapore International Arbitration Centre, the Hong Kong International Arbitration Centre, and the International Chamber of Commerce's International Court of Arbitration in Paris, the NYIAC was born. The Task Force concluded

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that, "the use of New York law in international agreements is widespread in the global business community due to its stability, predictability, neutrality, and consistent application by New York courts and arbitrators."¹⁰ This finding is especially important because a recent study indicated that the governing law is of primary concern among corporate counsel for some of the leading corporations around the world when drafting international arbitration agreements, and that the neutrality and impartiality of the legal system was the biggest influence on the choice of governing law.¹¹ Despite these findings, the same study indicated that New York was only the world's sixth most popular seat of arbitration.¹²

The formation of NYIAC, with the support of 35 leading commercial law firms, seeks to correct this imbalance by offering a venue that caters to the particular needs of the international legal community. This includes a venue with three main hearing rooms of varying sizes, the largest of which can hold over 40 people; interpreter booths that permit simultaneous interpretation of the proceedings; state-of-the-art audio/visual conferencing and LCD monitors; private break-out rooms, a canteen for coffee breaks; and private seating areas for witnesses.

Given NYIAC's convenience to New York's leading law firms, its location in a jurisdiction with a long history of supporting international arbitration, and its state-of-the-art facilities, the Center promises to be a formidable addition to New York's already extensive international arbitration resources, and increase New York's desirability as an arbitral venue relative to other global cities. The increased use of New York as a destination for international arbitration would be a significant driver of growth in the legal market. Significantly, the Task Force estimated that if the business of dispute resolution in New York were to be increased by 10-20 percent, "it could produce approximately \$200 to \$400 million in incremental revenues annually for law firms in New York."¹³ Given this strong economic development potential, commercial attorneys have one more reason to consider New York as a top-flight alternative to the existing international arbitration venues.

All of these features place New York in a better position than ever to compete with other leading international dispute resolution forums in London, Paris, Asia, and other venues around the globe. While the major international arbitration centers each have their own unique geographical and legal features, New York has a singular combination of stable and well-established law, a vast reserve of legal talent, and an extensive network of ancillary and support resources. New York's reputation as a neutral and impartial juris-

diction also bears emphasis when considering it in relation to other potential venues, given those factors, along with other aspects of the legal infrastructure, ranked highest among attributes corporations consider when choosing an arbitral venue.¹⁴

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If New York is to compete with more popular international arbitration locales, leadership of the initiative will be critical. NYIAC's leaders, for example, draw on New York's deep pool of arbitration talent, including Judge Judith S. Kaye, who served as Chief Judge on the New York Court of Appeals for 15 years until joining Skadden, Arps, Slate, Meagher & Flom in 2009. Kaye has worked tirelessly to implement the Task Force's recommendations. The Center's Board of Directors consists of New York lawyers with extensive experience handling international litigations and arbitrations both in New York and around the world. NYIAC's Board will bring its collective expertise and knowledge to bear in order to create a true center for international arbitration here in New York. The day-to-day operations of the Center have been delegated to its Executive Director, Alexandra Dosman. Until recently, Ms. Dosman practiced in the international arbitration group of Shearman & Sterling.

In addition to providing world-class facilities, NYIAC's mission includes developing programs, materials, and continuing legal education about international arbitration in New York, the application of New York law in international arbitration, and the recognition, enforcement and implementation of arbitral awards in New York. In these efforts, NYIAC has partnered with many of the extant New York-based institutions that administer arbitrations (such as the ICC, the ICDR and CPR) on presenting topics of interest to the international arbitration community. For example, on Sept. 10, 2013, NYIAC hosted a sold-out seminar on the new International Bar Asso-

ciation's Guidelines on Party Representation in International Arbitration in partnership with the ICC, the ICDR, CPR and JAMS International.

NYIAC's entry into the international arbitration field offers the New York legal community a state-of-the-art center to host international proceedings that will help cement New York's well-earned reputation as a forum of choice for resolving global legal disputes.

1. New York State Bar Association's Task Force on New York Law in International Matters, Final Report 39, 45 (June 25, 2011), available at <http://www.nysba.org/InternationalReport/>.

2. More information about NYIAC can be found on the Center's website at www.nyi.ac.org.

3. *Id.* at 30-39.

4. *Hall Street Associates v. Mattel*, 552 U.S. 576, 581 (2008); see also *Oxford Health Plans v. Sutter*, 133 S. Ct. 2064, 2070 (2013) ("Because the parties 'bargained for the arbitrator's construction of their agreement,' an arbitral decision 'even arguably construing or applying the contract' must stand, regardless of a court's view of its (de)merits") (quoting *Eastern Assoc. Coal v. United Mine Workers*, 531 U.S. 57, 62 (2000)).

5. See, e.g., *Scandinavian Reinsurance v. St. Paul Fire & Marine Ins.*, 668 F.3d 60, 72 (2d Cir. 2012) (summarizing recent case law regarding the strong presumption in favor of arbitration); *Porzig v. Dresdner, Kleinwort, Benson, N. Am.*, 497 F.3d 133, 138 (2d Cir. 2007) ("This Court has repeatedly recognized the strong deference appropriately due arbitral awards and the arbitral process, and has limited its review of arbitration awards in obsolescence to that process") (citation omitted); *Yusuf Ahmed Alghanim & Sons v. Toys "R" Us*, 126 F.3d 15, 25 (2d Cir. 1997) (an award will not be vacated based on interpretation of a contract term); *ReliaStar Life Ins. Co. of N.Y. v. EMC Nat. Life*, 564 F.3d 81, 85 (2d Cir. 2009) (court review of arbitration award is "severely limited"); *Matter of Miller*, 40 A.D.3d 861, 861 (N.Y. App. Div. 2d Dept. 2007) ("Arbitration is favored in New York State as a means of resolving disputes, and courts interfere as little as possible with agreements to arbitrate"); *Duferco Int'l Steel Trading v. T. Klaveness Shipping AIS*, 333 F.3d 383, 389 (2d Cir. 2003) (between 1960 and 2003 the Second Circuit vacated part or all of an arbitral award for manifest disregard in only four out of at least 48 cases).

6. See, e.g., *Telenor Mobile Commc'ns AS v. Storm*, 524 F. Supp. 2d 332 (S.D.N.Y. 2007), *aff'd*, 584 F.3d 396 (2d Cir. 2009) (enforcing arbitration award in favor of Norwegian company against Ukrainian company); *R.J. Wilson & Assocs. v. Underwriters at Lloyd's London*, No. Civ. A. 08-0322 DRH, (E.D.N.Y. Sept. 21, 2009) (granting U.K. defendant's motion to compel arbitration against a U.S. corporation); *Gabriel Capital v. Caib Investmentbank Aktiengesellschaft*, 28 A.D. 3d 376 (N.Y. App. Div. 1st Dept. 2006) (finding that arbitration agreement was enforceable by Austrian entity against New York entity).

7. See Stephen P. Younger, "Structuring ADR Proceedings," NYLJ, Sept. 20, 1993. This factor merits particular emphasis given the Task Force's finding that there is an "erroneous perception...that the selection of New York as an arbitral forum will automatically plunge the parties into runaway United States litigation style procedures." New York State Bar Association's Task Force on New York Law in International Matters, *supra* note 1 at 32.

8. Edna Sussman, 10 Questions: New York as a Leading Arbitration Centre, *Financier Worldwide*, July 2013, available at <http://www.financierworldwide.com/article.php?id=10877>.

9. Administrative Order of the Chief Administrative Judge of the Courts (AO/224/13), Sept. 16, 2013, available at <http://www.nycourts.gov/courts/1jd/supctmanh/AO-CIAM-caj.pdf>.

10. New York State Bar Association's Task Force on New York Law in International Matters, *supra* note 1 at 2.

11. See 2010 International Arbitration Survey: Choices in International Arbitration 8, 12, available at http://www.whitecase.com/files/upload/fileRepository/2010InternationalArbitrationSurvey_Choices_in_International_Arbitration.pdf.

12. *Id.* at 19.

13. New York State Bar Association's Task Force on New York Law in International Matters, *supra* note 1 at 3.

14. 2010 International Arbitration Survey: Choices in International Arbitration, *supra* note 11 at 18.